the action to declare the forfeiture is brought after this occurs; that is after the condition has taken place and the estate has divested. The lessee has nothing left to forfeit so this cannot be enforcing the forfeiture, it is only establishing it as a matter of record.

In the case of an implied covenant, it has been seen that equity will not always grant relief, but, when it does, is this enforcing forfeiture? For the breach of the implied covenant to develop the land when does the estate divest, at what time does the forfeiture take place? If it can be said that the estate has divested before equity cancels the deed and establishes the forfeiture as a matter of record then we have the same results as above. But, if the estate is not divested until the forfeiture is established by equity, then, it seems that this act itself certainly enforces the forfeiture. The implied covenant referred to is the one to develop the land with reasonable diligence. There is no act done that constitutes a breach of this covenant; the breach is in not doing. There is no certain time when the development must be done. Can we then put our finger on any one point of the duration of the lease and say the lessee was forfeited here, and that, therefore, cancelling the deeds is only establishing the forfeiture as a matter of record? There is no such point. Therefore, it appears that the establishing of the forfeiture as a matter of record is the act which determines the point at which the leasehold estate divests and consequently the act that enforces the forfeiture.

In the recent Virginia case, *Pence* v. *Tidewater Townsite Corp.* (Va.), 103 S. E. 694, the enforcement of a forfeiture in equity was refused. But in this case there was an adequate and complete remedy at law. The decision contains a lengthy discussion on forfeitures and the general rule in Virginia is indicated to be that equity will not enforce a forfeiture unless jurisdiction is obtained on some other grounds, and a forfeiture is necessary to do complete justice to the parties. However, an exceptional rule in the case of oil leases is mentioned, and it is said that the Virginia Court has indicated a tendency to recognize it.[13]

B. D. A.

CONSTITUTIONALITY OF NON-PARTISAN LEAGUE ACTIVITIES.—The activities of the Non-Partisan League, operating chiefly in the Northwest, may be typified by happenings in North Dakota. There the League carried through amendments to the State Constitution, thereby permitting laws to be passed authorizing participation by the State in such industries as the building and renting of homes,[1] the building, owning and operating of State-

[13] Cowan *v.* Radford Iron Co., 83 Va. 547, 3 S. E. 120; Shenandoah Land Co. *v.* Hise, 92 Va. 238, 23 S. E. 303.

[1] Act N. D. (Laws 1919, c. 150).

owned elevators and flouring mills,[2] and the organization of a State bank.[3] The legislature authorized the issuance of bonds to support these undertakings and provided, through taxation, for the payment of the bonds, principal and interest.

The constitutionality of these acts was challenged in the equity courts of North Dakota. The plaintiffs were taxpayers who prayed for an injunction preventing the disbursement of funds collected under the acts. The main contention of the plaintiffs was that the industries upon which the State had launched were in fact private enterprises, and that taxation for private purposes is deprivation of property without due process of law, and hence violative of the Fourteenth Amendment to the Federal Constitution. This contention was denied by the Supreme Court of the State.[4]

The court, in its opinion, said:

> "It (a private business) may be defined as a business or enterprise in which an individual or individuals, an association, co-partnership, or private corporation has invested capital, etc., * * * for the sole purpose that those who make such contributions may * * * acquire a financial profit for their exclusive benefit * * *."

A public enterprise, on the other hand, was defined as one which inures to the benefit of all the residents within a given political division.

Under this definition, and in view of conditions existing in North Dakota, the enterprises of the league were declared to be public uses. Accordingly, the injunction prayed was denied.

The decision in this case as to what is a "public use" goes rather far, but there are many cases giving a broad interpretation to this phrase, and the modern tendency seems to be toward such lenient interpretation.[5]

Appeal being taken to the Supreme Court of the United States,[6] it was there affirmed that legislative determination as to the nature of a use for which a tax is levied is subject to judicial review,[7] and that if the purpose be private, the tax is violative of the Fourteenth Amendment.[8] But the Supreme Court of a State was denominated the final arbiter of the question as to what constitutes a public use. Accordingly, the State decision was affirmed. It would seem from this holding that, so far as the federal courts are concerned, State socialism is constitutional.

It should be noted that, having just vindicated itself in the courts of law, the league has failed to do so in the court of public opinion, and has met with fatal political reverses.

T. L. P.

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[2] Act N. D. (Laws 1919, c. 152). [3] Act N. D. (Laws 1919, c. 147).
[4] Green *v.* Frazier (N. D.), 176 N. W. 11, 17.
[5] 26 R. C. L. 58 *et seq.*
[6] Green *v.* Frazier, 40 Sup. Ct. 499.
[7] 26 R. C. L. 44.
[8] Allen *v.* Jay, 60 Me. 124. 11 Am. Rep. 185.